

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEIA GAREY,

Plaintiff,

v.

TREVOR ANDERSON, an
individual; WASHINGTON STATE
UNIVERSITY, a public entity;
WASHINGTON BETA CHAPTER
OF SIGMA ALPHA EPSILON
FRATERNITY, an unincorporated
association; and SIGMA ALPHA
EPSILON FRATERNITY, INC., a
corporation,

Defendants.

NO. 2:22-CV-0069-TOR

ORDER GRANTING MOTION FOR
PROTECTIVE ORDER

BEFORE THE COURT is Defendant Washington State University's Motion for Protective Order (ECF No. 24). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Defendant Washington State University's Motion for Protective Order (ECF No. 24) is **granted**.

BACKGROUND

This case concerns sexual assault allegations involving students enrolled at Washington State University (“WSU”). ECF No. 1. On May 25, 2022, Plaintiff served WSU with two subpoenas for the student records of Defendant Trevor Anderson. ECF No. 24 at 2. On August 29, 2022, Plaintiff served WSU with Interrogatories and Requests for Production that seek information protected by the Family Educational Rights and Privacy Act (“FERPA”), including Anderson’s student records. *Id.* As a result, WSU seeks a protective order regarding the education records of Plaintiff and Anderson that are subject to FERPA. ECF No. 24. Plaintiff and Anderson filed responses to the motion. ECF Nos. 27, 28.

DISCUSSION

“A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending.” Fed. R. Civ. P. 26(c). The moving party must certify the parties conferred or attempted to confer in good faith to resolve the dispute. *Id.* For good cause shown, the Court may “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* Here, the parties conferred without a resolution. ECF No. 24 at 3.

FERPA protects student education records from improper disclosure. 20 U.S.C. § 1232g. “Education records” are “those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii)

1 are maintained by an educational agency or institution or by a person acting for
2 such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A). “Education records” do
3 not include “records maintained by a law enforcement unit of the educational
4 agency or institution that were created by that law enforcement unit for the purpose
5 of law enforcement.” 20 U.S.C. § 1232g(a)(4)(B)(ii).

6 FERPA provides limited exceptions to the parental consent to disclosure
7 requirement, such as disclosure of the education records by judicial order. 20
8 U.S.C. § 1232g(b)(2)(B). If disclosure is made pursuant to a judicial order, the
9 educational institution must notify the parents and students of the order in advance
10 of the ordered disclosure. *Id.* Courts that have considered FERPA disclosures in
11 the context of civil litigation have found that FERPA does not create an evidentiary
12 privilege barring disclosure but the underlying privacy concerns create a higher
13 burden on a party seeking access to education records. *See Garza v. Scott & White*
14 *Mem’l Hosp.*, 234 F.R.D. 617, 624 (W.D. Tex. 2005); *Ellis v. Cleveland Mun. Sch.*
15 *Dist.*, 309 F. Supp. 2d 1019, 1022 (N.D. Ohio 2004).

16 WSU seeks a judicial determination regarding the release of Anderson and
17 Plaintiff’s educational records where neither executed a FERPA waiver. ECF No.
18 24 at 6. The pending discovery only involves Anderson’s education records, but
19 Anderson indicated he may seek discovery of Plaintiff’s education records. ECF
20 No. 24 at 5–6. While WSU takes no position, WSU suggests the Court (1) allow

1 full discovery of the education records limited to Rule 26's requirements, (2) allow
2 limited production of education records related to the sexual assault allegations, or
3 (3) deny production of all education records on the grounds there are alternative
4 forms of discovery. *Id.* at 24. In the event the Court orders production, WSU
5 requests the Court enter a protective order and allow it to redact third-party names.

6 In response, Anderson objects to any disclosure on the grounds that he does
7 not seek Plaintiff's FERPA protected records and he understands that Plaintiff will
8 not seek his FERPA protected records. ECF No. 27 at 2. However, Plaintiff seeks
9 the release of Anderson's records, including his entire school file and the
10 investigative documents, on the grounds the information is necessary to assess
11 liability for each Defendant. ECF No. 28 at 2. Alternatively, Plaintiff requests the
12 Court conduct an in-camera review of the responsive documents. *Id.* at 3.

13 The Court finds Anderson's FERPA records as they relate to the sexual
14 assault allegations in the Complaint are relevant and proportional to the needs of
15 the case. Likewise, Plaintiff's FERPA records are subject to disclosure if the
16 records relate to the sexual assault allegations and are otherwise relevant and
17 proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The Court notes
18 any education records involving law enforcement as defined by FERPA are subject
19 to disclosure without further order of the Court. 20 U.S.C. § 1232g(a)(4)(B)(ii).

1 The parties' privacy interests are adequately protected by limiting the records by
2 the topic of sexual assault and the protective order the Court enters below.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1. Defendant Washington State University's Motion for Protective Order
5 (ECF No. 24) is **GRANTED**.

6 2. The Parties may seek and the University may produce FERPA protected
7 records of Defendant Trevor Anderson and Plaintiff Leia Garey limited
8 by Fed. R. Civ. P. 26(b)(1)'s requirements of relevancy and
9 proportionality. The production of these records is subject to the
10 confidentiality provisions below.

11 3. The University shall redact the names of non-parties from all records
12 produced, subject to further order of the Court.

13 4. All FERPA records produced will be subject to the following
14 confidentiality provisions:

15 a. "CONFIDENTIAL" MATERIAL

16 "Confidential" material shall include documents, records, or ESI
17 produced by the University and protected under FERPA.

18 b. SCOPE

19 The protections conferred by this order cover not only confidential
20 material (as defined above), but also (1) any information copied or

1 extracted from confidential material; (2) all copies, excerpts,
2 summaries, or compilations of confidential material; and (3) any
3 testimony, conversations, or presentations by parties or their
4 counsel that might reveal confidential material. However, the
5 protections conferred by this Order do not cover information that is
6 in the public domain or becomes part of the public domain through
7 trial or otherwise.

8 c. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

9 i. Basic Principles. A receiving party may use confidential
10 material that is disclosed or produced by another party or by
11 a non-party in connection with this case only for
12 prosecuting, defending, or attempting to settle this litigation.
13 Confidential material may be disclosed only to the
14 categories of persons and under the conditions described in
15 this Order. Confidential material must be stored and
16 maintained by a receiving party at a location and in a secure
17 manner that ensures that access is limited to the persons
18 authorized under this Order.

19 ii. Disclosure of “CONFIDENTIAL” Information or Items.

20 Unless otherwise ordered by the Court or permitted in

1 writing by the designating party, a receiving party may

2 disclose any confidential material only to:

3 (a) the receiving party's counsel of record in this action, as

4 well as employees of counsel to whom it is reasonably

5 necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house

7 counsel) of the receiving party to whom disclosure is

8 reasonably necessary for this litigation, unless the parties

9 agree that a particular document or material produced is for

10 Attorney's Eyes Only and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably

12 necessary for this litigation;

13 (d) the Court, court personnel, and court reporters and their

14 staff;

15 (e) copy or imaging services retained by counsel to assist in

16 the duplication of confidential material, provided that

17 counsel for the party retaining the copy or imaging service

18 instructs the service not to disclose any confidential material

19 to third parties and to immediately return all originals and

20 copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary unless otherwise agreed
3 by the designating party or ordered by the Court. Pages of
4 transcribed deposition testimony or exhibits to depositions
5 that reveal confidential material may not be disclosed to
6 anyone except as permitted under this Order;

7 (g) the author or recipient of a document containing the
8 information or a custodian or other person who otherwise
9 possessed or knew the information.

10 iii. Filing Confidential Material. Before filing confidential
11 material or discussing or referencing such material in court
12 filings, the filing party shall confer with the designating
13 party to determine whether the designating party will
14 remove the confidential designation, whether the document
15 can be redacted, or whether a motion to seal or stipulation
16 and proposed order is warranted. Local Civil Rule 5(g) sets
17 forth the procedures that must be followed and the standards
18 that will be applied when a party seeks permission from the
19 court to file material under seal.
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1 iv. Designation of Confidential Material. The University
2 shall designate FERPA material that it produces as
3 “Confidential” at the time it is produced by affixing the
4 word “Confidential” to each page that contains
5 confidential material.

6 d. UNAUTHORIZED DISCLOSURE OF PROTECTED
7 MATERIAL

8 If a receiving party learns that, by inadvertence or otherwise, it has
9 disclosed confidential material to any person or in any circumstance
10 not authorized under this Order, the receiving party must immediately
11 (a) notify in writing the Parties of the unauthorized disclosures, (b)
12 use its best efforts to retrieve all unauthorized copies of the protected
13 material, (c) inform the person or persons to whom unauthorized
14 disclosures were made of all the terms of this Order.

15 e. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all
17 appeals, each receiving party must return to the producing party or
18 destroy all confidential material, including all copies, extracts and
19 summaries thereof. Notwithstanding this provision, counsel are
20 entitled to retain one archival copy of all documents filed with the

1 court, trial, deposition, and hearing transcripts, correspondence,
2 deposition and trial exhibits, expert reports, attorney work product,
3 and consultant and expert work product, even if such materials
4 contain confidential material. The confidentiality obligations
5 imposed by this Order shall remain in effect until the Court orders
6 otherwise.

7 The District Court Executive is directed to enter this Order and furnish
8 copies to counsel.

9 DATED November 29, 2022.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge